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September 9, 1994

BY OVERNIGHT MAIL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 94-54

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Comments of Rochester Telephone Corporation in the above-captioned proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

Michael J. Shortley, III

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Equal Access and Interconnection)

Obligations Pertaining to)

Commercial Mobile Radio Services)

CC Docket No. 94-54

DOCKET FILE COPY ORIGINAL

COMMENTS OF ROCHESTER
TELEPHONE CORPORATION

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September 9, 1994

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Summary

Rochester," on behalf of its exchange, interexchange and wireless operations, submits these comments in response to the Commission's Notice initiating this proceeding. The Commission requests comment on three broad topics: (1) whether it should extend its equal access requirements to all CMRS providers, including cellular carriers not subject to the AT&T consent decree; (2) whether it should expand or modify the interconnection obligations currently applicable to local exchange carriers; and (3) whether it should institute a rulemaking to consider developing interconnection requirements that would apply to CMRS providers.

First, should the Commission decide to impose equal access obligations on CMRS providers, it should do so in a manner that does not place one set of market participants at a competitive disadvantage. Thus, if the Commission decides to adopt its proposal, it should apply any equal access requirements to all cellular carriers and to all other CMRS providers that are actual or potential competitors of cellular carriers, specifically including wideband PCS and enhanced SMR providers. Similarly, rules relating to local service area/point of interconnection and timing/transition issues should be implemented to minimize any potential competitive disparity.

⁷ The abbreviations used in this summary are defined in the text.

Second, the Commission need not broaden the interconnection obligations that already apply to exchange carriers. In particular, tariffing requirements are unnecessary and, potentially, counterproductive. The Commission's requirements already encompass the principles of equal interconnection and mutual compensation. Moreover, there is no evidence that the current interconnection principles are not operating efficiently.

Third, the Commission need not adopt detailed requirements governing interconnection among CMRS providers. Because CMRS providers will lack market power, the Commission should rely upon the market to determine the most efficient means of interconnection. If the Commission declares the existence of an interconnection obligation, it should make clear that such obligation applies to all CMRS providers that offer services actually or potentially competitive with cellular, ensure that exchange carriers are granted equal interconnection rights and determine that all such rights are reciprocal.

With respect to resale, the Commission should decline to permit one licensee to resell its facilities-based competitor's service for an unlimited period of time. Such a rule would only discourage investment in multiple wireless networks and, therefore, would undermine the Commission's goal in allocating spectrum for PCS. Similarly, if the Commission permits resellers to connect their switches to a facilities-based carrier's network, it should permit the facilities-based carrier to recover the costs of its network investment.

**Before the
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Washington, D. C. 20554**

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**COMMENTS OF ROCHESTER
TELEPHONE CORPORATION**

Introduction

Rochester Telephone Corporation ("Rochester"), on behalf of its exchange, interexchange and wireless operations, submits these comments in response to the Commission's Notice initiating this proceeding.¹ The Commission requests comment on three broad topics: (1) whether it should extend its equal access requirements to all commercial mobile radio service ("CMRS") providers, including cellular carriers not subject to the AT&T consent decree;² (2) whether it should expand or modify the interconnection obligations currently applicable to local exchange carriers;³ and (3) whether it should institute a rulemaking to consider developing interconnection requirements that would apply to CMRS providers.⁴

¹ Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Dkt. 94-54, Notice of Proposed Rule Making and Notice of Inquiry, FCC 94-145 (released July 1, 1994) ("Notice").

² Id., ¶¶ 16-100.

³ Id., ¶¶ 101-20.

⁴ Id., ¶¶ 121-45.

First, should the Commission decide to impose equal access obligations on CMRS providers, it should do so in a manner that does not place one set of market participants at a competitive disadvantage. Thus, if the Commission decides to adopt its proposal, it should apply any equal access requirements to all cellular carriers and to all other CMRS providers that are actual or potential competitors of cellular carriers, specifically including wideband personal communications services ("PCS") and enhanced specialized mobile radio services ("SMR") providers. Similarly, rules relating to local service area/point of interconnection and timing/transition issues should be implemented to minimize any potential competitive disparity.

Second, the Commission need not broaden the interconnection obligations that already apply to exchange carriers. In particular, tariffing requirements are unnecessary and, potentially, counterproductive. The Commission's requirements already encompass the principles of equal interconnection and mutual compensation. Moreover, there is no evidence that the current interconnection principles are not operating efficiently.

Third, the Commission need not adopt detailed requirements governing interconnection among CMRS providers. Because CMRS providers will lack market power, the Commission should rely upon the market to determine the most efficient means of interconnection. If the Commission declares the existence of an interconnection obligation, it should make clear that such obligation applies to all CMRS providers that offer services actually or potentially competitive with cellular, ensure that exchange carriers are granted equal interconnection rights and determine that all such rights are reciprocal.

With respect to resale, the Commission should decline to permit one licensee to resell its facilities-based competitor's service for an unlimited period of time. Such a rule would only discourage investment in multiple wireless networks and, therefore, would undermine the Commission's goal in allocating spectrum for PCS. Similarly, if the Commission permits resellers to connect their switches to a facilities-based carrier's network, it should permit the facilities-based carrier to recover the costs of its network investment.

Argument

I. ANY EQUAL ACCESS OBLIGATIONS THAT THE COMMISSION ADOPTS SHOULD BE COMPETITIVELY NEUTRAL.

Currently, only the cellular affiliates the Bell companies -- including Upstate Cellular Network ("Upstate"), of which Rochester is a partner⁵ -- are subject to equal access obligations. Other cellular providers have no such obligation. This disparity places the former group of carriers at a substantial competitive and financial disadvantage, for no

⁵ Upstate is a joint venture fifty percent owned each by Rochester and NYNEX Corporation that provides cellular service in the Buffalo, Rochester, Syracuse and Utica-Rome Metropolitan Statistical Areas ("MSAs") and the New York 1 Rural Service Area ("RSA"). In seeking approval from the Court overseeing the AT&T consent decree for the formation of Upstate, Rochester and NYNEX committed to providing equal access.

reason other than an historical accident.⁶ The Commission should not permit this competitive disparity to continue and should certainly not exacerbate it.⁷

A. Any Equal Access Obligations Should Apply To All Competing CMRS Providers.

If the Commission is to adopt a wireless equal access obligation, it should apply that obligation to all cellular providers and to all actual or potential competitors of cellular providers. The existing disparity makes no competitive or technological sense. At a minimum, the Commission should apply the same equal access requirements currently applicable to Bell company cellular operations to all cellular carriers.⁸

The Commission should also apply comparable equal access obligations to services that are actually or potentially competitive with cellular service. There is little question that enhanced SMR providers are direct competitors with cellular carriers, as the Commission

⁶ Under the AT&T consent decree and plan of reorganization as originally drafted, the Bell System's cellular assets were to be retained by AT&T, to which the decree's line-of-business restrictions and equal access provisions did not apply. However, because cellular was generally considered an exchange service, those assets and operations were transferred to the Bell companies at divestiture. See generally United States v. Western Elec. Co., 578 F. Supp. 643 (D.D.C. 1983).

⁷ This situation also arises in substantial part from application of the interexchange prohibition of the AT&T consent decree to Bell company cellular operations. The Bell companies have requested that this prohibition be removed and the Department of Justice has partially supported this request. See United States v. Western Elec. Co., CA 82-0192, Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers (July 25, 1994). Rochester believes that the interexchange prohibition -- at least as applied to wireless services -- should be eliminated. Although this is initially a matter for the Court, the Commission should take whatever steps are available to minimize existing competitive disparities.

⁸ See also Part I.B, infra.

has recognized.⁹ Similarly, PCS will undoubtedly develop as a direct competitor of cellular service.

There is no basis for the Commission to distinguish certain classes of CMRS providers with respect to equal access obligations. The argument -- advanced by certain parties¹⁰ -- that the Commission should exempt new or relatively new entrants from such requirements is misplaced. As the Commission correctly recognizes, the existence of equal access requirements will place potential PSC providers on notice that equal access will be a cost of doing business for which they must plan accordingly.¹¹ Similarly, there is little reason to expect that existing or future enhanced SMR providers would not be able to provide equal access.

Exempting certain classes of CMRS providers that compete with cellular providers would create nothing more than a protected class of competitors, a result that, ultimately and invariably, would be directly anticompetitive.¹²

⁹ See Regulatory Treatment of Mobile Services, GN Dkt. 93-252, Second Report and Order, 7 FCC Rcd. 1411, 1415-16, ¶ 7 (1994) ("Second Report and Order").

¹⁰ See Notice, ¶ 45.

¹¹ Id., ¶ 46.

¹² The Commission has classified other mobile radio services, such as paging and the like, as commercial. Few, if any, of these services appear to be competitive with cellular. Thus, if the Commission adopts an equal access requirement at all, Rochester does not propose that such an obligation should apply to these CMRS providers. The Commission, however, should reserve the right to impose such an obligation if competitive circumstances warrant.

B. Any Equal Access Obligations That the Commission Adopts Should Provide for Technical and Operational Comparability.

Technical and operational comparability issues are likely to arise in two areas: (1) transitional rules; and (2) the definition of a local service area. With respect to transitional rules, the Commission's tentative conclusion -- that any equal access obligation should be triggered by a bona fide request¹³ -- is reasonable. It would make little sense to require CMRS providers to invest in the additional facilities necessary to offer equal access if there is no demand for the service.

In addition, the Commission should model any CMRS equal access rules upon those it has adopted for the non-Bell exchange carriers,¹⁴ with one important exception. The Commission should treat any claim of technological impracticability with a healthy degree of skepticism. Among cellular providers, the Bell companies generally offer equal access in the markets that they operate -- large or small.¹⁵ There is little reason to believe that other cellular providers cannot do the same, particularly in markets where one cellular provider already offers equal access.¹⁶ Thus, the Commission should impose a clear and

¹³ Id., ¶ 55.

¹⁴ See MTS and WATS Market Structure, CC Dkt. 78-72 (Phase III), 100 FCC 2d 860 (1985); Investigation of Access and Divestiture-Related Tariffs, CC Dkt. 83-1145 (Phase I), 101 FCC 2d 911 (1985); id., 101 FCC 2d 935 (1985).

¹⁵ Upstate, for example, now offers equal access in all but one of its markets, including New York RSA 1 and the relatively small Utica-Rome MSA. Upstate will provide equal access from its lone remaining market -- Buffalo -- in the fourth quarter of this year.

¹⁶ The Commission may easily address the technical issues concerning intersystem handoff and call delivery (see Notice, ¶ 75) by incorporating into its rules the standards contained in the Court's waivers addressing these issues. See United States v. Western Elec. Co., CA 82-0192, slip op. (D.D.C. Sept. 10, 1990).

convincing burden of proof upon a cellular carrier to demonstrate that it cannot provide equal access, except at a cost that clearly exceeds the benefits.¹⁷

Other CMRS providers to which an equal access obligation may apply should be subject to an equally strict standard. PSC providers will know, in advance, that equal access will be a service requirement. Enhanced SMR providers should similarly be able to upgrade or expand existing facilities to accommodate requests for equal access.¹⁸

With respect to the definition of a local service area, the Commission correctly notes that different classes of CMRS providers operate under service area rules that are inconsistent among themselves and inconsistent with those that govern exchange carriers.¹⁹ Despite these differences, the Commission should take steps to encourage competitive parity. At a minimum, the Commission should define a local service area as no less than the authorized service territory of an exchange carrier or CMRS provider. This definition would then define the interconnection obligations for equal access purposes. The Commission should also make such a definition flexible. For example, if the Commission permits consolidation of Cellular Geographic Service Areas, it should treat

¹⁷ That is, the Commission should incorporate into any equal access requirements the economics-based AT&T consent decree standard rather than the technology-based standard contained in its equal access rules for non-Bell exchange carriers. Compare United States v. Western Elec. Co., 552 F. Supp. 131, 233, App. B, § A(3) (D.D.C. 1982), aff'd mem., 460 U.S. 1001 (1983), with MTS and WATS Market Structure, CC Dkt. 78-72 (Phase III), 100 FCC 2d 860, 875, ¶¶ 48-50 (1985).

¹⁸ Rochester notes that Nextel appears to argue for an exemption from an equal access obligation primarily on competitive, not technological, grounds. Notice, ¶¶ 23, 45. However, to the extent that Nextel wishes to compete with cellular providers, it should be willing to operate under the same set of rules.

¹⁹ Id., ¶¶ 57-61.

that consolidation as an increase in the local service area for equal access purposes. This type of flexibility will enable all providers to develop new services that meet consumer demand and permit competitors to adjust their operations to accommodate the differently-designed effective service territories.

II. THE COMMISSION SHOULD NOT EXPAND THE EXISTING INTERCONNECTION OBLIGATIONS APPLICABLE TO EXCHANGE CARRIERS.

Today, exchange carriers must make available to CMRS providers interconnection arrangements that are reasonably available.²⁰ The Commission has also endorsed the principle of mutual compensation.²¹ The Commission has not, however, determined that interconnection arrangements should be subject to tariffing requirements.²²

There is no reason for the Commission to change its current policies. There is little question that the current regime is serving its purpose, as evidenced by few, if any, disputes regarding the availability or terms of interconnection arrangements.²³ In the absence of a demonstrable need for a tariffing requirement, the Commission should decline to adopt one.

²⁰ See Need To Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P&F) 1275 (1986).

²¹ Second Report and Order, 9 FCC Rcd. at 1498, ¶ 232.

²² Notice, ¶ 108.

²³ Id., ¶ 114.

The Commission's alternative suggestion -- that exchange carriers include "most favored nations" clauses in all interconnection contracts²⁴ -- is both unnecessary and counterproductive. Such a requirement assumes that all customers are similarly situated. The Commission, however, has consistently recognized to the contrary. For example, in the context of its Expanded Interconnection proceeding, the Commission permitted exchange carriers to offer term and volume discounts and zone density pricing plans.²⁵ These decisions explicitly recognize that not all customers are similarly-situated and that the Communications Act permits reasonable distinctions among customer classes. In the wireless interconnection context, the Commission should recognize the same principle.

III. THE COMMISSION SHOULD ADOPT MARKET-BASED INTERCONNECTION AND RESALE OBLIGATIONS.

As the Commission correctly observes,²⁶ CMRS providers will, in all likelihood, possess no market power.²⁷ In this circumstance, there is no reason for the Commission to adopt detailed interconnection requirements. However, should the Commission do so,

²⁴ Id., ¶ 119.

²⁵ See Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. 91-141, 7 FCC Rcd. 7369 (1992), recon., 8 FCC Rcd. 127 (1992), vacated on other grounds sub nom. Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) ("Expanded Interconnection Order").

²⁶ Second Report and Order, 9 FCC Rcd. at 1467, ¶¶ 136-37.

²⁷ The Commission's conclusion that it cannot determine whether cellular carriers lack market power (see id., 9 FCC Rcd. at 1467-68, ¶ 138) is overly cautious. Nonetheless, as more spectrum becomes available for PCS, there is no possibility that cellular carriers will possess any market power whatever in the immediate future. Indeed, the Commission, despite its caution, required cellular carriers to cancel their interstate tariffs. Id., 9 FCC Rcd. at 1479-80, ¶ 178.

it should adopt interconnection requirements that neither favor nor disadvantage any particular class of CMRS provider.²⁸

The Commission also requests comment on whether it should modify its resale obligations that are currently applicable to cellular carriers.²⁹ The Commission should strictly limit the ability of any CMRS licensee in a particular geographic area to resell the services of other CMRS licensees in the same area. The Commission adopted such rules with respect to cellular licensees.³⁰ In addition, the Commission should examine carefully the economics of switch-based resale arrangements to avoid providing disincentives for investment by licensees in the wireless infrastructure.

**A. The Commission Need Not Impose
Detailed Interconnection Requirements
Upon CMRS Providers.**

As the Commission notes,³¹ the existence of market power may necessitate the adoption of specific interconnection requirements. However, CMRS providers will possess no market power, particularly once PCS licensees begin to deploy their networks. Thus, the Commission may rely upon market forces to dictate the terms of interconnection that may be actually made available. CMRS licensees will likely have every incentive to offer reasonable terms of interconnection to other CMRS providers. Interconnection will permit

²⁸ But see supra at 5 n.12.

²⁹ Notice, ¶ 137.

³⁰ Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Dkt. 91-33, Report and Order, 7 FCC Rcd. 4006, 4009-10, ¶ 20 (1992) ("Cellular Resale Order").

³¹ Notice, ¶ 124.

one provider's customers to reach other providers' customers, thus increasing the attractiveness of the services offered and, therefore, revenues. Such interconnection will also provide options in addition to interconnection through exchange carriers' networks.³² Thus, beyond recognizing the general duty of interconnection already contained in the Communications Act,³³ the Commission should decline to adopt detailed interconnection requirements.

However, the Commission should explicitly clarify that any duty of interconnection would apply equally and reciprocally to all telecommunications providers. With the proliferation of competing networks, there is no reason to impose upon particular types of carriers -- such as exchange carriers or cellular carriers -- more onerous interconnection requirements than are applicable to their competitors. Incumbency alone provides no basis for the establishment of differential requirements. To the extent that there are (or soon will be) multiple substitutes available, that one provider has been in business longer than others provides it with no inherently unfair or anticompetitive advantage. The Commission should not attempt to create artificial protections for favored classes of competitors.

The Commission should also decide that any interconnection obligations will be reciprocal in nature. A reciprocity principle will help ensure that interconnection requests will be reasonable. Carriers will have every incentive to evaluate such requests and,

³² The Commission's implicit assumption that the interconnection of multiple CMRS providers through the public switched network may be inefficient (*id.*, ¶ 126) may well prove to be incorrect. In many cases, this form of interconnection may be the most economic and efficient available.

³³ 47 U.S.C. § 201(a).

because multiple sources of supply will exist, the market will dictate the most economically efficient forms of interconnection. Additional, detailed regulation is unnecessary.

B. The Commission Should Adopt Reasonable Resale Obligations.

Consistent with past practice, the Commission should declare that the prohibition of, or unreasonable restrictions on, the resale of communications services are prohibited.³⁴ The Commission, however, should subject this general rule to two important qualifications.

First, the Commission should not grant any CMRS licensee in a particular geographic area the right to resell its competitors' services in that area for a lengthy period time. This "right" would create a positive disincentive for new entrants to invest in their own wireless networks. In the cellular context, the Commission limited the ability of one provider to resell its competitor's services to the five-year fill-in period and did so, at least in part, in response to the "headstart" problem inherent to the comparative hearing and lottery processes for awarding initial cellular licenses.³⁵

For PCS licenses, which will be awarded through auctions, "headstart" should not be an issue. No PCS licensee should be disadvantaged as a result of delays that were inherent to the cellular licensing process. Although start-up PCS providers may need to resell the services of existing cellular and enhanced SMR providers for a short, interim period, the Commission should limit this ability. Otherwise, the Commission would provide

³⁴ See, e.g., Resale and Shared Use of Common Carrier Services, 60 FCC 2d 261 (1976), recon., 62 FCC 2d 588 (1977), aff'd sub nom. AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978).

³⁵ Cellular Resale Order, 7 FCC Rcd. at 4009-10, ¶ 20.

new licensees with a positive incentive to free ride on incumbent providers' investment to date in their networks and provide a disincentive for such licensees to invest in their own wireless networks. These are precisely the reasons that the Commission limited competitive resale opportunities in the cellular context. Those reasons are equally applicable to all CMRS providers that are actual or potential competitors to cellular providers.

Second, the Commission should not adopt detailed pricing requirements to govern switch-based resale, as it imposed upon exchange carriers in the context of its Expanded Interconnection proceeding.³⁶ While exchange carriers may arguably possess some market power in selected aspects of the access business, CMRS licensees -- including cellular licensees -- lack market power and would, therefore, be unable to dictate the terms of such arrangements. If a potential switch-based reseller wishes to enter the market, it will have multiple opportunities to negotiate acceptable resale arrangements. Thus, there is little likelihood that a potential switch-based reseller could not gain entry on commercially reasonable terms and conditions.

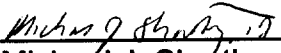
Detailed pricing rules would also present free-ride opportunities. CMRS licensees must make substantial investments in their wireless infrastructures. The Commission should, in order to encourage investment in such facilities, permit CMRS licensees to recover this investment, by negotiating and establishing market-based resale rates. Extensive Commission involvement in the negotiation process is unnecessary.

³⁶ See Expanded Interconnection Order, 7 FCC Rcd. at 7423-33, ¶¶ 116-37.

Conclusion

For the foregoing reasons, the Commission should act upon the proposals contained in the Notice as suggested herein.

Respectfully submitted,


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September 9, 1994